

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE LUIS BELLO PAULINO et al., :

Plaintiffs, : ORDER

-v.- :

22 Civ. 8724 (GWG)

S & P MINI MARKET CORP. et al., :

Defendants. :

-----X
GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

The Court is emailing counsel a new draft of jury instructions accompanied by a verdict sheet and charts. While the parties will be given a chance to state their objections fully at the charge conference after the trial begins, it will be helpful to have any major problems brought to the Court's attention as soon as possible. Thus, if either party has any significant objections, the party should file a letter accompanied by any proposed revisions by tomorrow, Tuesday, if possible. Minor objections can be presented in Court on Wednesday morning.

The Court notes that it has eliminated any language regarding whether the parties "intended" plaintiff's wages to cover only the first 40 hours of work per week or more. The Court understands that S&P Mini Market comes within the hospitality industry regulations of the New York Labor Law which require that, for weeks where an employee works more than 40 hours per week, the employee's regular rate of pay is determined by dividing his weekly pay by 40. See N.Y. Comp. Codes R. & Regs. tit. 12 § 146-3.5(b).

Additionally, the instructions as to determining "employer" status proposed by the parties have been modified to make clear that determining "operational control" is not a separate factor but the very essence of the employer test. See Irizarry v. Catsimatidis, 722 F.3d 99, 107 (2d Cir. 2013). The language of this charge has been modified in other ways to be consistent with Irizarry.

Finally, in light of the parties' stipulation, the instructions refer to the fact that "there is no dispute as to how much Paulino was paid."

SO ORDERED

Dated: January 13, 2025
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge